

**DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS**

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: March 7, 2005

Case Number: TSO-0197

This Decision concerns the eligibility of XXXXXXXXX (the individual) to hold an access authorization¹ under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." The individual's access authorization was suspended by the Manager of a Department of Energy (DOE) local office pursuant to the provisions of Part 710. Based on the record before me, I am of the opinion that the individual's access authorization should be restored.

I. Background

The individual is an employee of a contractor at a DOE facility. After the individual was arrested for Driving While Intoxicated (DWI) on August 24, 2003, the DOE local office conducted a Personnel Security Interview (PSI) with the individual on December 18, 2003. *See* DOE Exhibit 32.

Because the security concern remained unresolved after the PSI, the DOE local office requested that the individual be interviewed by a DOE consultant psychiatrist. The psychiatrist interviewed the individual on April 15, 2004. *See* DOE Exhibit 14. The DOE local office ultimately determined that the derogatory information concerning the individual created a substantial doubt about his eligibility for an access authorization, and that the doubt could not be resolved in a manner favorable to him. Accordingly, the DOE local office suspended the individual's access authorization, and proceeded to obtain authority to initiate an administrative review proceeding.

The administrative review proceeding began with the issuance of a Notification Letter to the individual. *See* 10 C.F.R. § 710.21. That letter informed the individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for access authorization.

¹Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material. 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

The Notification Letter included a statement of that derogatory information and informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding his eligibility for access authorization. The individual requested a hearing, and the DOE local office forwarded the individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Hearing Officer in this matter.

At the hearing convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the individual and the DOE consultant psychiatrist. The DOE Counsel submitted exhibits prior to the hearing. I closed the record upon receiving the transcript of the hearing on July 15, 2005.

I have reviewed and carefully considered the evidence in the record. I have considered the evidence that raises a concern about the individual's eligibility to hold a DOE access authorization. I have also considered the evidence that mitigates that concern. And I conclude, based on the evidence before me and for the reasons explained below, that the security concern has been sufficiently resolved.

II. Analysis

A. The Basis for the DOE's Security Concern

As indicated above, the Notification Letter issued to the individual included a statement of the derogatory information in the possession of the DOE that created a substantial doubt regarding the individual's eligibility for access authorization. In the Notification Letter, the DOE characterized this information as indicating that the individual "is a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependent or as suffering from alcohol abuse" and suffers from "an illness or mental condition which in the opinion of a psychiatrist causes, or may cause, a significant defect in the judgment or reliability of" the individual. *See* 10 C.F.R. § 710.8(h), (j). The Notification Letter also asserted that the individual "has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable, or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation, or duress which may cause him to act contrary to the best interests of national security." *See* 10 C.F.R. § 710.8(l). These statements were based on an April 18, 2004 diagnosis by the DOE consultant psychiatrist that the individual suffered from "alcohol abuse, early, partial remission" and that he "may also suffer from pathological gambling." DOE Exhibit 14 at 9. The Notification Letter also cited the individual's August 2003 DUI arrest, an earlier arrest for DWI in October 1983, and charges of simple assault and domestic violence in 1985, 1993, and 1997.

1. Alcohol Abuse

The DOE psychiatrist concluded in his April 18, 2004 report that the individual met the criteria for alcohol abuse set forth in the Diagnostic and Statistical Manual of Mental Disorders IV-TR (DSM-IV-TR).

- A. A maladaptive pattern of alcohol use leading to clinically significant impairment or distress, as manifested by one (or more) of the following, occurring within a 12-month period:
- (1) recurrent alcohol use resulting in a failure to fulfill major role obligations at work, school, or home . . .
 - (2) recurrent alcohol use in situations in which it is physically hazardous . . .
 - (3) recurrent alcohol-related legal problems . . .
 - (4) continued alcohol use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the alcohol . . .
- B. The symptoms have never met the criteria for Alcohol Dependence

DOE Exhibit 14 at 9. The DOE psychiatrist stated in his report that the individual met criterion B and subcriteria (2),(3), and (4) of criterion A for alcohol abuse. The individual does not specifically dispute that he meets the criteria for alcohol abuse cited by the DOE psychiatrist, though his attorney stated, in a written response to the Notification Letter, that the individual’s alcohol use “has never interfered with his work” and “has become less of a problem as time went along.” Letter from Individual’s Attorney to DOE Local Office (October 12, 2004).

Particularly in the absence of any contradictory expert testimony, there appears to be a sound basis for the DOE psychiatrist’s diagnosis of alcohol abuse, given the individual’s two DWI/DUI arrests, and his other brushes with the law stemming from incidents of domestic violence, most if not all of which appear to be alcohol-related. See Transcript of Personnel Security Hearing (Tr.) at 8, 15.² Whether or not alcohol has ever interfered with the individual’s work (which is not alleged), this valid diagnosis of alcohol abuse is, by itself, sufficient to raise substantial doubt as to the individual’s eligibility for access authorization. 10 C.F.R. § 710.8(j); 10 C.F.R. § 710.7(b) (citing the criteria in section 710.8 as the “principal types of derogatory information which create a question as to the individual’s eligibility for access authorization”). In other DOE access authorization proceedings, hearing officers have consistently found that a diagnosis related to excessive alcohol use raises important security concerns. See, e.g., *Personnel Security Hearing*, Case No. TSO-0168, 29 DOE § 82,807 (2005) (and cases cited therein). In these cases it was recognized that the excessive use of alcohol might impair an individual’s judgment and reliability, and his ability to control impulses. These factors amplify the risk that the individual will fail to safeguard classified matter or special nuclear material.

² The individual attended domestic violence classes after the 1985 incidents, and the 1993 domestic violence charge was later dismissed. DOE Exhibits 10, 12. After the 1997 arrest, the individual was placed on two years’ probation and required to perform 20 hours of community service. DOE Exhibit 8. Because of the role of alcohol in these incidents, and because there have been no similar incidents for nearly nine years, I do not find that the incidents of domestic violence raise security concerns, at least not ones separate from those raised by the individual’s alcohol abuse.

2. Gambling

The DOE psychiatrist also found in his April 18, 2004 report that the individual “may also suffer from a second ‘addiction,’” pathological gambling, “although he may not meet full DSM criteria.” DOE Exhibit 14 at 9. The report cited the individual’s statements in his interview with the psychiatrist that he gambled “four or five days per week” and that he “used money needed for bills to gamble . . .” *Id.* at 6. The report also notes that the individual filed for Chapter 13 bankruptcy in 2003. *Id.* at 9. In his response to the Notification Letter, the individual’s attorney contends,

Gambling is a source of local entertainment, and although it can be abused, the evidence of visiting or even frequenting a casino, in and of itself, is not an indication of a problem, and certainly not “unusual conduct” nor any indicator as to whether or not [the individual] is “honest, reliable or trustworthy” nor does it point to any “pressure, coercion, exploitation or duress.”

Letter from Individual’s Attorney to DOE Local Office (October 12, 2004).

While it is true that legal gambling does not necessarily raise security concerns, “[c]onditions that could raise a security concern and may be disqualifying include . . . [f]inancial problems that are linked to gambling, . . .” 66 Fed. Reg. 47061, 47067 (September 11, 2001) (“Adjudicative Guidelines Approved by the President in Accordance With the Provisions of Executive Order 12968” published as an appendix to Subpart A of the Part 710 regulations).³ Such financial problems can become a security concern because “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.” *Id.* In the present case, the individual declared bankruptcy in 2003⁴ and has admitted that he gambled with money needed to pay bills. Thus, whether the individual’s gambling ever rose to the level of a diagnosable mental illness, it nonetheless raises legitimate security concerns.

B. Whether the Security Concerns Have Been Resolved

A hearing under Part 710 is held “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization,” i.e., “to have the substantial doubt regarding eligibility for access authorization resolved.” 10 C.F.R. § 710.21(b)(3), (6). Under the Part 710

³ The President recently approved a revision of these guidelines, which uses similar language in relation to gambling, and in addition states, “Compulsive gambling is a concern as it may lead to financial crimes including espionage.” Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, <http://www.archives.gov/isoo/pdf/hadley-adjudicative-guidelines.pdf> (December 29, 2005). While citing the adjudicative guidelines, I recognize that their application is not dispositive in any given case. Ultimately, the “decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest.” 10 C.F.R. § 710.7(a).

⁴ The Notification Letter does not cite the individual’s bankruptcy filing or financial irresponsibility generally as a security concern in the present case, instead only referring to the bankruptcy filing as evidence of a “significant gambling problem.” DOE Exhibit 1.

regulations, the Hearing Officer is directed to make a predictive assessment as to whether restoring access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

"In resolving a question concerning an individual's eligibility for access authorization," I must consider

the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

10 C.F.R. § 710.7(c). The factors set forth in the regulations that are most pertinent to this case are the absence or presence of the rehabilitation and reformation, and the likelihood of continuation or recurrence of either alcohol abuse or gambling in the future.

1. Alcohol Abuse

The individual testified at the hearing in this case that he had his last drink on June 17, 2004, more than one year prior to the hearing. Tr. at 36. The individual states that his motivation to quit was based on concern for his job and his health, and also credits "the fact that I'm back in church now and I have a good relationship with God." Tr. at 57-58. I found the individual's testimony to be credible, as did the DOE psychiatrist. Tr. at 54. When asked whether the individual has exhibited adequate evidence of rehabilitation and reformation, the psychiatrist stated,

That's a very difficult question. By the letter of what I wrote in my report, we're looking for two years [of abstinence]. However, [the individual]'s over a year and I believe that he believes with confidence that he can abstain from drinking. I think it's a positive thing that he values his job and recognizes that drinking again is going to jeopardize his job, so that I would say I would be optimistic that he will meet criteria for reformation.

HEARING OFFICER GOERING: Just clarify that though. At this time, does he, I guess is the question.

[HEARING COUNSEL]: Right.

[DOE PSYCHIATRIST]: I'm not sure how to answer that. Based on the strict interpretation of what I've written, that would not be the case. But again, I'm optimistic that he will meet the two years and hopefully for the rest of his life . . .

Q. By [HEARING COUNSEL]: Well, at this time, would you still say that [the individual] has a mental illness or mental condition that would cause a significant defect in judgment or reliability at this time?

A. No, I don't think so given the belief that he has abstained from drinking for at least a year . . .

Tr. at 50-51.

Of course, whether the individual meets certain standards of rehabilitation or reformation is not the ultimate question in this case. Rather, it is one of the considerations taken into account in making the necessary predictive assessment, in this case whether the individual will return to problem drinking in the future. So, at the hearing I asked the DOE psychiatrist

what do you think are the chances that [the individual] will once again resume drinking alcohol given what you know right now?

[DOE PSYCHIATRIST]: That's an appropriate question, a very difficult one to answer because it depends on each individual's personality and determination. In [the individual]'s case, he quit drinking before. There was not the factor of his job as leverage, so I think that's an additional favor--a factor in your favor at this point.

Additional assurance would come from asking [the individual] to submit to testing on some sort of 6-monthly basis. That would certainly be more assurance, more leverage to help him continue to abstain.

HEARING OFFICER GOERING: Unfortunately, I can't make my determination conditional on something like that, so I guess I have to ask you without such a condition imposed, what do you see are the chances that he would resume drinking? Is his prognosis good? Do you see the risk as being low?

[DOE PSYCHIATRIST]: I would say prognosis is good. I would say prognosis is good. I would hesitate to give a percent, could not give a percent; but I would say that I'm hopeful and I believe the chances for abstaining are good. They're not outstanding or excellent. They're good.

. . . .

HEARING OFFICER GOERING: But again just to sum up your, as I understood it, your prognosis was good?

[DOE PSYCHIATRIST]: Good.

HEARING OFFICER GOERING: The risk of relapse low?

[DOE PSYCHIATRIST]: Relatively low.

Tr. at 53-54, 59.

2. Gambling

In his report, the DOE psychiatrist sets out no standards by which the individual could demonstrate rehabilitation or reformation from pathological gambling, which is understandable given that the psychiatrist made no definitive diagnosis on this point, instead opining that the individual “may also suffer” from pathological gambling. DOE Exhibit 14 at 9.

For his part, the individual

signed off at the boats from gambling last June [2004]. It's been a year. And when you sign off at the boats, you're not allowed to be on the property. It's trespassing; and at [one of the local boats], I can still go there and participate in all the other stuff, but I can't go into the casino.

Q. Okay.

A. That's the only one I wouldn't be trespassing if I went to.

Q. And just to be clear, how you get on the gambling floor is you have to present a player's card. Is that right?

A. Exactly.

Q. And the only way you can get a player's card is presenting an ID. Is that right?

A. Exactly.

Q. And they run the ID through a computer and then present the card to you. Is that correct?

A. Yes.

Q. It comes up with your name?

A. Correct.

Q. And they have it computerized that once you put your name on the no gambling list that it would pop up and not allow you to enter the boat. Is that correct?

A. Well, I would get a \$500 fine automatically for being there in that position, so I'm sure that's probably how it works.

Q. But you don't know?

A. No.

Q. Because you haven't gone on since you put your name on the list. Right?

A. Right.

Q. And you did that last year?

A. Yeah. I did that last year.

Q. So you haven't participated in any gambling, like going to Las Vegas since then?

A. No.

Q. Do you have any intention of gambling?

A. No.

Q. Do you feel that you have any compulsion that you need to gamble?

A. No.

Tr. at 41-43.

The DOE psychiatrist commended the individual's decision to put his name on the "no gambling list," stating, "It was certainly in his best interest that he put his name on the list because I believe that is a way to avoid gambling at least locally." Tr. at 49. Further, while the psychiatrist "didn't have enough data [to] be sure" that the individual ever suffered from pathological gambling, Tr. at 35, the psychiatrist testified that the individual does not *currently* suffer from a mental illness or mental condition that would cause a significant defect in judgment or reliability, either with respect

to alcohol abuse or pathological gambling. Tr. at 51-52. Finally, compared to the “good” prognosis offered by the psychiatrist as to the individual’s future relationship with alcohol, the psychiatrist concluded, “I think the prognosis with regard to gambling is better.” Tr. at 54.

III. Conclusion

Though this is a difficult case to decide, my sense of the individual is that he is committed to his sobriety and fully appreciates the risks of returning to drinking. The individual had also refrained from gambling for over a year at the time of the hearing, and has taken concrete steps to ensure that he will not gamble in the future. I share the optimism expressed by the DOE psychiatrist and believe that the chance that the individual will return to either drinking or gambling is low enough that what risk it does present is acceptable.

Upon consideration of the record in this case, I find that there is evidence that raises a substantial doubt regarding the individual’s eligibility for a security clearance. However, the concern raised by that evidence has been sufficiently mitigated such that, “after consideration of all the relevant information, favorable and unfavorable,” I conclude that restoring the individual’s “access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. §§ 710.7(a), 710.27(a). The Manager of the DOE Operations Office or the Office of Security may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Steven J. Goering
Hearing Officer
Office of Hearings and Appeals

Date: